



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SEREC Corporation

File: B-270273.3

Date: November 30, 1995

DECISION

SEREC Corporation protests that all other offerors responding to request for proposals No. SPO490-95-R-2506, issued by the Defense General Supply Center for solvent cleaning machines and related items, are nonresponsive. Specifically, SEREC alleges "on information and belief" that all of its competitors are nonresponsive because their proposed equipment can explode under certain circumstances and does not comply with certain safety and air emissions standards.

We dismiss the protest because it challenges the ability of an awardee that has not yet been selected to perform the contract.¹ Generally, a determination that an offeror is capable of performing a contract is based in large measure on subjective judgments and is not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. Section 21.5(c), 60 Fed. Reg. 40,737, 40,742 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.5(c)); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Here, there is no showing of possible fraud or bad faith, or that the definitive responsibility criteria have been misapplied.

¹The agency is currently conducting discussions with the offerors.

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To the extent that SEREC is protesting that its competitors' equipment cannot meet safety and emission standards that amount to definitive responsibility criteria, the protest is premature because it merely anticipates improper action that has not yet taken place. Protests that merely anticipate improper agency action are speculative and premature. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512.

Consequently, there is no basis for us to consider the protester's claim at this time. If, in the future, the agency takes concrete action that may properly form the basis for a valid bid protest, the protester may file with our Office at that time.

The protest is dismissed.

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